UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 08-13555(JMP)

- -x

In the Matter of:

LEHMAN BROTHERS HOLDINGS INC., et al.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

June 17, 2009

2:07 PM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

HEARING re Motion Seeking Authorization of Intercompany Funding of ARS Holdings II LLC by Lehman Brothers Holdings Inc. [Docket No. 3872]

HEARING re Debtors' Motion for Approval of a Cross-Border Insolvency Protocol [Docket No. 3647]

HEARING re Debtors' Motion for Authorization to Establish Procedures to Sell or Abandon De Minimis Assets [Docket No. 3572]

Transcribed by: Clara Rubin

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P R O C E E D I N G S

THE COURT: Be seated, please.

MR. FAIL: Good morning -- good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. FAIL: Garrett Fail, Weil, Gotshal & Manges, for Lehman Brothers Holdings Inc. and its debtor affiliates. I first wanted to thank Your Honor for accommodating the debtors' request for a hearing this afternoon between omnibus hearings.

There are three items on the agenda today, all of which are uncontested. So this should be able to proceed. Unless Your Honor has another request, we could proceed in the order that they appear on the agenda?

THE COURT: Let's do it that way.

MR. FAIL: Okay. The first motion, Your Honor, is a motion pursuant to Sections 105(a) and 363 of the Bankruptcy Code for authorization of intercompany funding by Lehman Brothers Holdings Inc. of ARS Holdings II LLC, LBHI's nondebtor wholly-owned direct subsidiary.

As was set forth in the motion, Your Honor, ARS Holdings is required to fund an earn-out payment to preserve one of Lehman's valuable assets, a twenty-percent interest in D.E. Shaw & Company, L.P. and D.E. Shaw & Co., LLC. If ARS Holdings were to fail to make the payment, it would be in breach of the agreements governing the investment.

In order to satisfy its obligations, however, ARS

Holdings requires intercompany funding by LBHI. LBHI's agreed to provide the intercompany funding. We've been advised -- the debtors have been advised that the creditors' committee has approved of LBHI's reasonable exercise in its business judgment to do the funding. In exchange for the funding, ARS Holdings will receive a note, which is currently being negotiated to accommodate a request from the creditors' committee's counsel.

Your Honor, by order to show cause, you set the objection deadline for this motion as of the beginning of the hearing. And today there have been no objections interposed.

So if the Court has any questions, I'd be happy to answer. Otherwise, I would request that the motion be approved.

THE COURT: I have no questions about this, but I'll simply inquire if any party-in-interest wishes to be heard with regard to this?

MR. O'DONNELL: Your Honor, Dennis O'Donnell, Milbank, Tweed, Hadley & McCloy, on behalf of the committee. Just to reiterate, we did review this proposed transaction. Diligence: the -- both the amount of the payment and the need and justification for making the payment. I believe that it is in the best interest of the estates to allow this funding to be made.

THE COURT: Fine. That makes it easier for me to say yes.

MR. FAIL: Thank you very much, Your Honor.

MR. KRASNOW: Your Honor --

THE COURT: Good afternoon.

MR. KRASNOW: -- Richard Krasnow, Weil, Gotshal & Manges LLP, for the debtors. Your Honor, it is with great pleasure that I appear before you this afternoon with respect to the debtors' motion for approval of a cross-border insolvency protocol. That motion appears as docket number 3647.

Your Honor, I don't know that I really need to go into great detail with regards to this protocol. I think we first reported on our efforts in this regard. One of my partners, Mr. Perez, and Mr. Erhmann from Alvarez & Marsal was here today and has really been on point in this entire process.

We started on February 11th advising the Court as to our intention to see whether or not we could do in this case what has never been done before with regards to a cross-border protocol involving multiple debtors in proceedings throughout the world, governed by both civil and common law, to see whether or not we could all gather together the administrators and the Chapter 11 debtors in recognition of the fact that Lehman, while a disparate enterprise in some respects, was uniform and united in many others, cash management, data systems and the like, to see if we could fill a vacuum, if you will, that exists in the lack of any public law dealing with

something like that and arrive at a consensual private agreement, if you will, amongst all of the administrators to see if there were uniform approaches that we could arrive at in dealing with common issues, common problems and, hopefully, common solutions.

Your Honor, I'm hesitant to emphasize that which is in the protocol and that which has been noted in two of the statements in support that have been filed here, one by the committee and one by the ad hoc committee of creditors of the debtors, which is to say that this is not a binding agreement, that if the Court were to approve, as we hope it does, the protocol, all the Court is approving is the concept of the protocol and not any resolutions that may be arrived at amongst the administrators which may require subsequent approval by whatever tribunals are implicated by those resolutions.

I would rather focus, Your Honor, on what this protocol is. It's more than aspirational, Your Honor. It's an enthusiastic indication and desire by the administrators, who are parties to the protocol, and the Chapter 11 debtors that there is a path to be followed and a desire, a mindset on the part of the administrators and the debtors to try to cut our way through the morass and indeed arrive at common solutions here.

Your Honor, if -- and that enthusiasm is reflected in part by the fact that one of the administrators who is a party

to the protocol, the Dutch trustee, and I've already apologized to him before the hearing because I was convinced I will mispronounce his name, Mr. Schinimelpenninck --

THE COURT: How did he do, Mr. Schinimelpenninck? Is that right? Did we pronounce your name correctly?

MR. SCHINIMELPENNINCK: Yes.

THE COURT: Or close enough at least?

MR. KRASNOW: The protocol is working, Your Honor.

THE COURT: Great.

MR. KRASNOW: That if Your Honor is inclined to grant this motion, and just so the Court is aware what the next steps will be, there have been -- the parties have, in essence, almost worked in furtherance of the protocol and consistent with the ideals of the protocol even before it was signed, indeed even before it was finalized.

There have been numerous discussions and meetings. Mr. Ehrmann has travelled the world. And some of the administrators have even come to New York: the Dutch trustee, Dr. Frege, the administrator for Bankhaus. We've also met with PwC Switzerland, who is the administrator for Finance SA.

We -- the next steps will be -- those are individual meetings. Again, if Your Honor approves this, that there is a meeting which is scheduled in London in mid-July to be attended by all of the signatories to the protocol, as well as a number of administrators who either have not yet obtained the

requisite approval to be signatories to the protocol -- that would include the administrator in Luxembourg -- and others who are still debating whether they will become formal members of the protocol but, even if they do not, have indicated a desire to participate in the process, which from our perspective is the same as becoming a member of the protocol group, if you will. And those parties include, Your Honor, a representative from LB Japan; the PwC Switzerland has indicated whether or not they'd become a party to the protocol, that they would participate in the meeting in London. PwC Bermuda, they are provisional liquidators in connection with a Bermudan entity; they too have indicated an intention to appear.

I should also note, Your Honor, that as reflected in a recent filing we made prior to the hearing, the trustee for Lehman Brothers Inc. is a signatory to the protocol. And the trustee and his representatives will also be attending the meeting.

So it's a very good start to what I'm sure will not be a short process, but we are very optimistic that it will result in a satisfactory resolution that will benefit all stakeholders and will expedite in many ways the administration of our case and other cases in a very cost-effective manner.

Your Honor, unless you have any questions, based on --

THE COURT: I have two questions --

MR. KRASNOW: Very well.

THE COURT: -- based upon your presentation. And you should feel free to deflect responding if you think it would be just as well not to respond. One question involves the meeting just adverted to take place in July. What's the agenda for that meeting, if there is one? And what would be a successful outcome of that meeting from the perspective of the debtors? That's really a two-part question.

MR. KRASNOW: Your Honor, one of the significant common issues that is addressed in the protocol and in the motion and in the prior presentations that we've made to the Court relate to intercompany claims. Intercompany claims fall in at least two groups, and they're probably subgroups. You have intercompany claims that relate to trading relationships, swaps and the like, derivatives, but you also have a significant number of intercompany claims that represent loans and advances, expenses, sharing of expenses, and the like.

And one of the primary focuses of the meeting will be to discuss with the administrators, or continue the discussions that we've already commenced, as to whether or not, given the nature of the claims, given the manner in which Lehman operated prior to the commencement of the case, whether there is a methodology that can be adopted with respect to those claims which would at least accelerate and facilitate agreements amongst the parties as to the amounts of those claims.

Similarly -- and that's very much of a multilateral

kind of issue. As to the trading, the derivatives and the like, in one respect, Your Honor, the issues that arise amongst and between the Lehman entities is bilateral in nature. On the other hand, there are multilateral issues as to how one might calculate the claims that exist between the parties. And that too will be the subject of discussion.

I don't doubt that there will be discussions regarding data-sharing issues, but I would say that those are two or three of the topics that we would anticipate discussing. I am sure there will be more. And we would anticipate that subsequent to that meeting there will be further meetings, maybe not all physical, but other meetings that we'll have as a group, as subgroups and like.

And as I noted, Your Honor, and this was a point that was addressed in some of the statements, and certainly it was a point that was raised by some creditors who have inquired of us with respect to the provisions of this protocol, to the extent that any consensus that is reached amongst the administrators, the parties to the protocol and those who would not participate which would necessitate going back to the respective tribunals, then, as it relates to us, we would come back to court and seek approval of that.

Again, in approving this protocol, if the Court is inclined to do so, the Court is not approving any specific resolutions and proposals that may emanate from this process.

I hope I've answered Your Honor's questions.

THE COURT: You have. I have a second, and this is the one you may want to duck.

MR. KRASNOW: There's a reason for a podium, Your Honor.

THE COURT: On May 13th, I received a rather lengthy letter with attachments from Linklaters on behalf of the U.K. administrators setting forth a rationale for the U.K. administrators not participating in the multilateral protocol. You, on behalf of the estates, sent a letter as well the next day, if I recall, raising some concerns about the involvement of the U.K. Court, but apparently without notice to the debtors, in authorizing the issuance and transmittal of that letter.

I'm not trying to open up that Pandora's box, but my general question is has anything positive in reference to the relationship between the U.K. estate and the debtors' other estates transpired since then? And should I draw any comfort from the fact that the July meeting is taking place in London?

MR. KRASNOW: One answer, Your Honor, could be, if I wanted to be a little humorous, is can we define "positive"? But seriously, Your Honor, one of the reas -- there are a number of reasons for selecting London, not the least of which is you have parties coming from Asia, the U.S. and elsewhere. Another reason -- and so that was a central location -- it

would certainly facilitate LBIE and PwC if they chose to come on in and have dinner with us, as we are proposing to have as part of the program, or participate in some of the meeting. It would certainly facilitate that. And we are -- we would hope that they would consider that. They have, so far, indicated that they don't have a current intention of participating in that process.

Having said that, Your Honor, included in the materials that were sent to the Court was a proposed memorandum of understanding which went precisely to the proposed methodology treatment, at least in terms of calculating amounts of intercompany claims. And I think that was something -- I know it was something that was sent to numerous administrators, as well as ourselves, through that submission. And it was, I think, the first written product that had been circulated amongst the parties as a proposal. And while we have some questions about some of their suggestions and perhaps some disagreements in that regard, we thought that it was a very good talking piece.

And, indeed, there has been communication between representatives of the debtors and PwC and LBIE regarding their proposal. And it's our intention to, in fact, include amongst our agenda items at the meeting, since everybody received this, to discuss that. And certainly from our perspective, to the extent that PwC wanted to have their views known and listen to

other parties' views, notwithstanding their belief that multilateral approaches don't -- is not the approach that they want to adopt, we would very much invite them.

We think it would be constructive for them to articulate their views and for them to hear the views of others. And, you know, if everybody signs a piece of paper which is said to be bilateral so you only have two parties but it's the same document, yes, it's bilateral but it's multilateral in nature. And if characterizing that as bilateral works for them, it works for us.

So I'm not -- I can't say whether they will agree to what I've just said, but we're certainly hopeful. And we know that -- we understand that a number of administrators have reached out, will be reaching out to them, to see whether or not on some level they would show us the sights in London.

THE COURT: Well, I hope the meeting in July turns out to be a productive one and that the representatives of LBIE find some time to intersect with the many other parties-in-interest who will be at least in the same city at that time.

I'd also like to make a comment, because I think it's appropriate for me to make this disclosure. And I say this, in part, because the protocol has not yet been approved, although, no suspense here, it will be; it's just a question of when, this afternoon, it's approved. Ordinarily, court-to-court communication is something which is authorized once a protocol

has been adopted within a particular jurisdiction. And the ALI and International Insolvency Institute together have promulgated guidelines for court-to-court communications, which guidelines are an exhibit to the debtors' motion.

That was more of a theoretical proposition until this week when I received by fax a letter from the supervising judge in the Netherlands simply transmitting to me a copy of a letter that she had transmitted to Justice Blackburn of the High Court of England in Wales. And I'm not attempting now to characterize that communication. I'm simply noting that two court-to-court communications have in fact taken place, one being the letter from the supervising judge in the Netherlands to Mr. Justice Blackburn, the other being the transmittal of that letter to me, along with some other correspondence.

I simply wanted that to be publicly disclosed, because in the ordinary course of court-to-court communication there is a, I'll use the term again, protocol for giving some notice to parties-in-interest that such communication either is about to take place or has taken place.

MR. KRASNOW: Thank you, Your Honor. I guess I will formally say it, even though the Court has indicated where it is going, but unless the Court has any further questions, we would simply request that the motion be granted and the protocol be approved.

THE COURT: I approve it with pleasure.

MR. KRASNOW: Thank you, Your Honor.

MR. ALBANESE: Good morning, Your Honor -- good afternoon, rather. Anthony Albanese with Weil, Gotshal & Manges, on behalf of the debtors. Your Honor, we're also here today to submit to the Court the motion pursuant to Sections 105, 363, 554(a) of the Bankruptcy Code for authority to establish procedures to sell or abandon de minimis assets. And the debtors have sought the Court's approval of the proposed procedures in the motion in order to minimize the burden to the debtors in relieving the debtors' estates of certain unproductive, nonessential and burdensome assets that are not necessary to the efficient winding-down of the estates. The relief sought would minimize the expenses that would be associated with the selling of more than 117,000 assets.

I'll just quickly outline the procedures that are detailed in the motion. With respect to the sale procedures, they're both sale and abandonment procedures. With respect to the proposed sale procedures, for assets that fall between 300,000 and 2 million, and the value will be measured by the lesser of either the book value or the sale price, for those assets, notice will be given to certain parties that are detailed in the motion, including the creditors' committee and the trustee. And notice would be given to them, but Court approval would not be sought. And they'd be given ten days to object from receipt of notice to any of the proposed sales.

For assets that fell in the category below that, below 300,000 dollars, notice would not be given to any parties and Court approval would not be sought, with one exception: Notice would be given to the creditors' committee and to Barclays of sale of ownership or the granting of exclusive rights of any copyright, patent or trademark sales. And, again, that would be at any price, so it would cover the below-300,000 dollar category that has been created.

Under the proposed abandonment procedures, notice of all abandonments would be given irrespective of amounts. And parties would be given five days to object to any of the proposed abandonments. And monthly reports will be filed with the Court, summarizing all the noticed de minimis sales and all the abandonments for that month.

Your Honor, a number of objections have been filed, as Your Honor, I'm sure, has seen. All have been worked out, resolved and withdrawn. And, therefore, we ask the Court's permission to have the proposed order, as revised, approved.

THE COURT: I'm prepared to do that. I just want to inquire if anyone wishes to be heard with regard to this matter?

MR. FLECK: Good afternoon, Your Honor. Evan Fleck of Milbank, Tweed, Hadley & McCloy, on behalf of the official committee of unsecured creditors. Your Honor, in connection with this motion, the committee reviewed the motion and

considered the procedures. We are comfortable with the order. We wanted to make the Court aware that the committee takes very seriously procedures that take out of the committee's review particular transactions. Based upon our discussions with the debtors about the assets that are the subject of this motion, we are comfortable that the thresholds that have been agreed to are appropriate.

And in the case of abandonment, given that we will have review, and in the other category of sales, given the modifications to the order, we are comfortable that it's appropriate, and it's the appropriate balancing of a procedure for truly de minimis assets. And with that, Your Honor, we are comfortable and supportive of the motion and the revised order.

THE COURT: Fine.

MR. FLECK: Thank you.

THE COURT: The motion is granted.

MR. FAIL: Thank you ver --

THE COURT: Mr. Fail, it looks as if we've completed the agenda.

MR. FAIL: I think that's right, Your Honor. Unless anybody else has anything, thank you for your time.

THE COURT: Fine. We're adjourned.

(Proceedings were concluded at 2:33 PM)

I N D E X

R U L I N G S

C E R T I F I C A T I O N

I, Clara Rubin, certify that the foregoing transcript is a true and accurate record of the proceedings.

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